

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID FOX)	
Claimant)	
VS.)	
)	Docket No. 1,017,623
PEPSI COLA BOTTLING COMPANY)	
Respondent)	
AND)	
)	
CONTINENTAL WESTERN INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent appeals the January 6, 2005 preliminary hearing Order of Administrative Law Judge Kenneth J. Hursh. Claimant was awarded benefits after the Administrative Law Judge (ALJ) determined that claimant had proven that he suffered accidental injury arising out of and in the course of his employment on the date alleged.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of his employment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant, a route driver for respondent, regularly delivered product to outlying stores, driving a semi-trailer truck loaded with Pepsi product, cases of syrup and tanks of carbonated gas. Claimant lifted weights on a regular basis between 45 and 75 pounds. Claimant testified that on May 14, 2004, while making his deliveries, he experienced some difficulties in his rectal area. On his way home from work that day, he noticed bleeding in his rectal area. Claimant did have a history of hemorrhoids, however, this was several years prior to the alleged date of accident.

Claimant testified he continued with spotty bleeding over the weekend, but was involved in no heavy lifting activities, so the symptoms did not worsen.

On Monday, May 17, 2004, claimant performed his regular duties, but began noticing significant difficulties with rectal bleeding and pain. Claimant advised his account manager, Ty Miller, of the problem, but testified that Mr. Miller “blew it off.”¹

Claimant later reported the problem to Peter Farabi, the vice president of the franchise, and testified Mr. Farabi said to “get what I needed to get done.”² Neither Mr. Miller nor Mr. Farabi testified in this matter.

Claimant then presented himself to the Mt. Carmel Regional Medical Center emergency room in Pittsburg, Kansas, on Tuesday, May 18, 2004. He was referred to Dwane M. Beckenhauer, M.D., for treatment and underwent excision and ligation of the hemorrhoidal tissues. Claimant underwent approximately three weeks of conservative care and was ultimately returned to work. At the preliminary hearing, claimant testified he had been returned to work without restrictions, but was no longer working for respondent, as his job had been modified to place him on a vending route with lesser pay, to which he objected, resulting in his dismissal.

Respondent contends that claimant’s failure to advise the emergency room that his condition was work related defeats his claim. Claimant, however, contends that he did tell the emergency room that his problem was related to work, but that he was not specific in alleging that it was related to the lifting at work, simply that it occurred as a result of his work.

Dr. Beckenhauer, the treating physician, in his letter of July 30, 2004, opined that claimant’s heavy lifting and straining aggravated his hemorrhoids, which led to the thrombosis and the bleeding. Claimant was referred for an evaluation to board certified internal medicine specialist Chris D. Fevurly, M.D. Dr. Fevurly, after examining claimant and reviewing medical research, determined that there were no scientific articles reporting a higher incidence of hemorrhoids in the work population versus the unemployed population. Dr. Fevurly noted a risk of the development of hemorrhoids with constipation and straining at stools, but no documented increased risk for the development of hemorrhoids in people who perform heavy lifting. While that comment is interesting, it does not specifically state that claimant’s condition did not occur as a result of his heavy lifting, merely that there was no documented evidence to show an increased risk from heavy lifting.

¹ P.H. Trans. at 10.

² P.H. Trans. at 12.

Dr. Beckenhauer, however, was specific that the heavy lifting and straining aggravated claimant's hemorrhoidal condition. The Board finds the evidence from Dr. Beckenhauer to be more convincing, finding that claimant has proven, by a preponderance of the credible evidence, that his condition suffered on or about May 17, 2004, did arise out of and in the course of his employment.

Respondent alleges that claimant's condition was non-work related because it occurred several days before the May 17, 2004 date. Claimant's testimony was that his condition first began on May 14, 2004, while working. However, his condition did not worsen to the point where he sought medical treatment until the lifting incidents on May 17, 2004.

The Board finds claimant has proven by a preponderance of the credible evidence that his hemorrhoidal condition was either caused or aggravated by his employment with respondent. He has, therefore, proven that he has suffered accidental injury arising out of and in the course of his employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Kenneth J. Hursh dated January 6, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2005.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Nathan D. Burghart, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director